IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 537 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SWASTIK TEXTILE ENGINEERING PVT. LTD.

Versus

STATE OF GUJARAT

Appearance:

MR AK CLERK for Petitioner No. 1

Mr.R.V. Desai, ASST GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 28/06/2001

ORAL JUDGEMENT

The Court issued rule on 22.1.2001 and the same is served to the respondent workman on 8.2.2001, but he has not chosen to remain present before the Court, nor had he got himself represented through an advocate.

2. This petition is filed by Swastik Textile Engineers Pvt. Limited against an order passed by the Assistant Commissioner of Labour, Ahmedabad Division dated 25.9.2000 making a reference, a copy of which is produced at Annexure 'I' to the petition, whereby the dispute mentioned in the schedule is referred for adjudication to the Labour Court, which reads as under:

> "As to whether R. Bharatirajan is required to be reinstated on his original post with full back wages?"

3. The facts giving rise to the present petition are that the workman, respondent no.2 herein had joined services of the petitioner company as erector on 9.2.1994. Said workman resigned from the services for the reasons stated in his resignation letter dated 23.6.1994, Annexure 'A'. It is the case of the management that pursuant to that letter, the respondent workman was paid his dues on the next date, i.e. 24.6.1994 and the resignation was accepted. However, the respondent workman once again applied on 31.12.1994 for reemployment. A copy of the application dated 31.12.1994 is produced at Annexure 'B' to the petition. The petitioner management gave him reemployment with effect from 1.1.1995. Thereafter, respondent workman applied for medical leave for a period of one week from 25.5.1996 to 31.5.1996, a copy of which is produced at Annexure 'C' to the petition. The respondent workman did not report for duty on expiry of said leave period. Therefore, the management addressed a letter dated 8.6.1996 by Registered Post A.D. (Ack. Due) and the same was received by the workman on 12.6.1996, a copy of which is at Annexure 'D' to the petition. However, the respondent workman did not report for duty. The management addressed yet another letter dated 17.6.1996 by Registered Post Ack. Due, which was received by him on 22.6.1996, but he still did not report for duty.

4. The petitioner management was surprised when it received a notice from the Labour Court issued in Recovery Application No.3191 of 2000 filed by the respondent workman claiming for Earned Leave which according to the respondent workman has become due to his credit for the services rendered to the petitioner management from 1.2.1993 to 31.5.1996 as per the say of the respondent workman. He calculated the same to be at the rate of 21 days Earned Leave per year, totalling to 73 days. He claimed an amount of Rs.8423/-, for this leave period at the rate of Rs.3000/-, per month. He also claimed bonus and the salary for the month of May

1996 as his case was that the salary for the month of May 1996 was not paid to him. What came next was more shocking and surprising to the petitioner management. A notice issued by the Assistant Commissioner of Labour, Ahmedabad Division in complaint filed by the said respondent workman dated 19/20.6.2000 was served on the petitioner management. What is important is that in column no.14, wherein date of termination is to be shown, 11.2.2000 is shown as the date.

5. Mr.Clerk, learned advocate for the petitioner management submitted that the petitioner management tried to file its reply in IDR Case No.563 of 2000 at which the complaint of the respondent workman was registered. When said reply was tendered in the office of the Assistant Labour Commissioner, the petitioner management informed that as the workman was not present, the same may be tendered on a subsequent date. But before the same could be tendered and taken into consideration by the Assistant Labour Commissioner, the impugned order dated 25.9.2000 making a reference came to be passed. Being aggrieved of that the present petition is filed.

Mr.Clerk, learned advocate for the petitioner made available a xerox copy of the proceedings of the Assistant Commissioner of Labour, which is taken on record, wherein on 20.7.2000 it is recorded that,

For the institution .. Present
For workman .. Not present
For Union .. Not present
Adjourned to .. 3.8.2000.

6. Mr.Clerk, learned advocate for the petitioner management relied upon a judgement of the Apex Court in National Engineering Industries Limited v. State of Rajasthan and others, reported in (2000) 1 SCC 371, wherein the Apex Court has laid down that the condition precedent for making reference is, "existence or apprehension of an industrial dispute". It is also laid down that the High Court can entertain a writ petition challenging an order of making a reference on the ground of non existence of an actual or apprehended industrial dispute. Mr.Clerk submitted that in the present case there was neither an industrial dispute in existence nor at an apprehended stage. It was submitted that from the facts it is clear that the respondent workman had abandoned the services. He did not report for duty on expiry of leave, which he had applied for a period from 25.5.1996 to 31.5.1996 on medical grounds. Further it is clear from the facts that the petitioner wrote two

consecutive letters; one dated 8.6.1996 which was received by the respondent workman on 12.6.1996 and another dated 17.6.1996 which was received by the workman on 22.6.1996. Even thereafter the respondent workman did not report for duty. Learned advocate submitted that it is required to be noted that in (i) Recovery Application No.3919 of 2000 before the Labour Court the date shown by the respondent workman of having served with the petitioner management is shown to be upto 31.5.1996 and (ii) in the complaint filed before the Assistant Labour Commissioner dated 19/20.6.2000 date of termination is shown to be 11.2.2000. This goes to show that the respondent workman, with an oblique motive, has filed the complaint before the Assistant Commissioner of Labour, who without giving an opportunity to the petitioner management to file its reply decided ex parte. In fact, the petitioner management had tendered its reply in the office of the Assistant Commissioner of Labour, which was not accepted and it was said that the same may be tendered on a future date as on that day the respondent workman was not present at the relevant time. It is true that the provisions of Labour law are meant for the welfare of the workman at large in the country, but then the said provisions cannot be allowed to be misused as in the present case the workman has tried to. The date mentioned in the Recovery Application tallies with the facts given by the petitioner management. Therefore, this Court has reason to believe that the petitioner management has come out with true facts before this Court. As against that the date mentioned by the respondent workman in the complaint before the Assistant Commissioner of Labour may be under some ill advice, with an oblique motive, is not the correct date on the basis of which reference is sought to be made by the Assistant Labour Commissioner.

7. In view of the aforesaid discussion the present petition is allowed. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)

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